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Choice of Law in International Commercial Arbitration

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Chapter 7 contains a particularly timely discussion of Chinese development of intellectual property protection with the passage of the Trademark Law of 1982, and the Patent Law of 1985. The principle of recognizing property rights in the context of labor is necessarily antithetical to China's Communist ideals, and the author presents an excellent analysis of the conflict between China's desire to integrate itself into the world economy with the realization that foreign investors are reluctant to provide technical know-how that would normally be protected property. Apropos, Jia discusses the belated passage of the Copyright Law in 1991 in response to the United States' imposition of "Super 301" trade sanctions. This discussion of Chinese reticence to recognize private property rights coupled with the stated goals of foreign technology acquisition is consistent with the book's overall theme that liberalization of Chinese law is more the product of calculated concessions to strengthen Chinese economy than cooperative development. As this particular area is still in transition, the final word on the success of Chinese recognition of intellectual property rights is still undetermined.

Chinese Foreign Investment Laws and Policies, is both an excellent introduction and an in-depth presentation to Chinese foreign investment issues. The "tidal" categories are logically organized, and contain enough reference to underlying laws to make this book a practical guide for approaching Chinese commercial law. It is clear, however, that the level of dynamic change described by this book will necessitate continuous updates and revisions.

Jonathan Kindred

CHUKWUMERIJE, OKEZIE, CHOICE OF LAW IN INTERNATIONAL COMMERCIAL ARBITRATION; Quorum Books; Westport, CT (1994); ISBN 0-89930-878-3; 218 pp. (hardcover).

The growing predominance of international business has given rise to the need for quick, reliable settlements of commercial disputes. As a result, international commercial arbitration, while being as old as the practice of trade itself, has seen a recent growth within the global business and legal communities. Okezie Chukwumerije's *Choice of Law in International Commercial Arbitration* is a comprehensive analysis of the legal problems arising out of choice of law disputes at different stages of the arbitration process. *Choice of Law* examines the different reasons why choice of law disputes arise and offers solutions to these problems by applying national and international strategies at resolution. Similarly, Chukwumerije demonstrates the significance of commercial arbitration and the importance of resolving choice of law disputes in the international business arena.

The author lists three major benefits underlying international

commercial arbitration. First, with the ever accelerating speed at which global business is carried out, it is not surprising that a quick, inexpensive way of resolving disputes is preferable to that offered by filing suits in domestic courts. Second, in contracts with sovereign states as parties, foreign parties are assured of an unbiased resolution. This is exemplified by the nationalization of Texaco's oil refineries by Libya. It seems without recourse to arbitration, Texaco would not have been able to receive a fair decision for compensation. Finally, commercial arbitration agreements satisfy the parties' desire for a great deal of flexibility in determining what law or rule should govern a contract if a dispute arises. This provides reliability and ensures that all parties to a contract know ahead of time all the details of dispute resolution. Arbitration contracts, however, cannot anticipate every possible dispute so national and international law is necessary to fill in the gaps left by agreements. This gives rise to choice of law disputes.

Chukwumerije outlines three distinct scenarios where commercial arbitration can arise. First, at the outset of the dispute to determine which laws are applicable to the arbitration agreement itself. It should be noted that the law determining the applicability of the arbitration agreement can often be different from the law determining the substantive aspects of the arbitration contract. In the past, many different choice of law strategies have been utilized to determine both the capacity and the authority of parties to enter into arbitration agreements. From these, the author advocates the utilization of a "close connection test", which is the principle that the laws most closely related to the arbitration agreement should govern. Not only does this test look to the parties implied interests, but also considers the country or international organization that may have a stake in the matter.

A second important area where choice of law issues arise is in attempting to determine the laws applicable to the arbitral procedure. In this area, there is a growing trend towards international harmonization of arbitration proceedings, both through the use of conventions and treaties, as well as through the standardization of national laws for the conduct, regulation, and enforcement of arbitration proceedings and awards. With this trend, misconceptions based on localized ways of doing business will be prevented, creating an environment which encourages international business negotiations.

Finally, choice of law disputes occur when trying to resolve substantive disputes arising out of commercial arbitrations. The author points out that this is the area with the least amount of agreement, thus emphasizing the need for parties to specify which national law is to be used in case of substantive disputes. Until a more uniform set of international laws governing commercial arbitration exists, this is the only option to protecting the parties interests.

The need for resolution of choice of law problems in commercial arbitration is upon us; while everyone agrees that international busi-

ness could benefit enormously from the resolution of these disputes, there is no uniform theory from which to solve them. Okezie Chukwumerije's *Choice of Law in International Commercial Arbitration*, while emphasizing individual party responsibility toward ameliorating these problems, shows that national and international laws need to be harmonized in order for disputes to be satisfactorily resolved. While analyzing the different approaches taken to dispute resolution, great insight is gained in understanding how close we are to bridging these problems.

Thomas Muther

MCGEE, ROBERT W., A TRADE POLICY FOR FREE SOCIETIES: THE CASE AGAINST PROTECTIONISM; Quorum Books, Westport, CT (1994); ISBN 0-89930-898-8; 191 pp. (hardcover).

Robert McGee's *A Trade Policy for Free Societies* is appropriately subtitled *A Case Against Protectionism* since it is a polemic against protectionism, more than a case for liberalized trade. By dividing the free world economic system into two camps, producers and consumers, McGee argues that the basic result of any protectionist policy is to protect fat-cat producers at the expense of ordinary consumers. Tariffs, subsidies, and other free trade barriers harm consumers more than producers, he claims, because protectionism raises prices. McGee, a professor of business, argues from a neo-classical economic standpoint, and acknowledges political factors only as a thorn in the side of free-trade economic policies in the sense that protectionist ideas have survived, despite well reasoned arguments to the contrary because of a well-financed lobby.

A Trade Policy for Free Societies challenges various mercantilistic (e.g. infant industry) and labor (e.g. job and wage preservation) arguments supporting protectionism by revealing the fallacies of each. McGee's approach is to shift the labor vs. management paradigm by utilizing economic models to demonstrate that protectionism harms the average worker as consumer. According to McGee, subsidies are a government's way to soak the taxpayers of one country to pay for the purchases of another country, for the net gain of the producers in both countries. Similarly, anti-dumping laws raise prices thereby lowering real wages for consumers who could otherwise benefit from less expensive products. McGee's logical conclusion is that even if a country's imports grow infinitely while its exports shrink to zero, the economy would be better off because it would be more efficient, in neo-classical economic terms.

Certainly, if neo-classical economic theory is anything, it is logically valid. Problems arise when political and social forces are dismissed as mere "market failure" and not accounted for in the equation.